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Via Reg. Ex.
CITY ATTORNEY

2010 APR -5 AM 8:18

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

CHRISTOPHER LEE DUNN,

Plaintiff,

-vs-

CITY OF BURBANK; DENNIS A. BARLOW;
AND DOES 1 THROUGH 25, INCLUSIVE,

Defendants.

CASE NO.: BC417928

PLAINTIFF'S REPLY TO DEFENDANT'S
OPPOSITION TO MOTION FOR RELIEF
FROM WAIVER OF DISCOVERY
OBJECTIONS

DATE: April 9, 2010
TIME: 8:30 a.m.
DEPT: 31

Assigned to: Hon. Alan Rosenfield, Judge
Department 31

Trial Date: August 27, 2010

Plaintiff, Christopher Lee Dunn, submits the following Memorandum of Points and
Authorities in reply to Defendant's opposition to Plaintiff's motion for relief from waiver of
discovery objections.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Defendant's Opposition Is Full of Falsehoods and Irrelevant Matter.**

3 Nothing in Defendant's opposition negates the simple facts that the discovery responses were
4 served late because, due to a calendaring software update, the matter did not show up on Mr. Gresen's
5 computer calendar, and that Plaintiff served responses as soon as he could after learning that the
6 responses were late.

7 Defendant's statement that: "Plaintiff's counsel responded by stonewalling, stating that they were
8 considering further responses and then simply changing their mind" (Defendant City of Burbank's
9 Opposition to Plaintiff's Motion for Relief from Waiver of Discovery Objections ("Opposition"), p.1,
10 ll.9-10) is false and not backed up by any evidence submitted with the opposition. Defendant's
11 statements that:

12 "In response, plaintiff's counsel e-mailed City's counsel and promised to consider providing
13 supplemental responses. However, this 'consideration' dragged on as Plaintiff's counsel
14 continued to delay actually making a response. (Tyson Decl., ¶¶ 8,9.) ¶ Such responses were not
15 forthcoming." (Opposition, p. 2, ll.15-18)
16 mischaracterizes Paragraphs 8 and 9 of the Tyson Declaration. The responses referred to in the Tyson
17 Declaration, as is made clear by the e-mails attached thereto as Exhibit "E," were responses to
18 Defendant's meet and confer letter, which Defendant acknowledges receiving, not supplemental
19 responses to the discovery requests. The first e-mail in the chain, from Robert J. Tyson to Solomon
20 Gresen, states: "I cannot find a record of a response to Ms. Pelletier's meet and confer letter . . ."
21 (Exhibit "E" to Tyson Declaration.) Mr. Gresen's e-mails clearly refer to responses to the meet and
22 confer letter.

23 Defendant argues that Mr. Gresen knew of the continued due date because "he" asked for the
24 extension. (Opposition, p.3, l.25 - p.4, l.2.) However, the letter confirming the extension, attached as
25 Exhibit "A" to the Opposition, makes clear that it was Mr. Gresen's assistant who requested the
26 extension. Furthermore, even if it had been Mr. Gresen who asked for the extension, that does not show
27 that he was aware of the due date when it arrived, and does not negate the fact that the discovery
28 responses were served late because, due to the calendaring software update, the matter did not show up

1 on Mr. Gresen's computer calendar.

2 Defendant's argument that Mr. Gresen's reason for missing the deadline does not hold up under
3 scrutiny shows that Defendant does not understand the reason. The fact that the deadline was entered
4 into the computer system after the merger had taken place is why it did not show up on Mr. Gresen's
5 computer. Mr. Gresen's computer was only showing information from the old database.

6 Defendant asks: "Why did Gresen sit on his client's rights for nearly three months after the
7 waiver?" (Opposition, p.4, ll.25-26.) The answer is obvious, no motion for relief was necessary until
8 Defendant filed its motion to compel further discovery responses.

9 Defendant asks: "Why did he (Mr. Gresen) seem to allude that further responses would be
10 forthcoming only to renege on that statement?" (Opposition, p. 4, ll.26-27.) As was shown above, Mr.
11 Gresen did not allude that further discovery response would be forthcoming, only that a response to
12 Defendant's meet and confer letter would be forthcoming, which it was. Mr. Gresen did not "renege"
13 on anything.

14 Defendant incorrectly states that, in stating that relief should be granted unless inexcusable
15 neglect is clear, Plaintiff's counsel misstated the law. (Opposition, p.5, ll.1-7.) Defendant notes that
16 Plaintiff cited *Elston v. City of Turlock*, (1985) 38 Cal.3d 227, 235. However, instead of arguing that
17 Plaintiff misstated the holding in *Elston, supra*, Defendant simply cites a different case for a different
18 proposition. This does not show that Plaintiff "misstated" the law.

19 Defendants's statement that "Plaintiff's counsel simply failed to answer because he forgot or
20 was too busy" (Opposition, p.7, ll.1-2) is false, is not supported by any evidence submitted with the
21 Opposition, and is contradicted by Mr. Gresen's declaration in Plaintiff's moving papers.

22 Defendant argues that the discovery responses are "not as complete and straightforward as they
23 could be." (Opposition, p. 8, ll.2-3.) However, even if this were true, it would not mean that the
24 responses fail to comply with the code.

25 Defendant repeatedly asserts (on Page eight of the Opposition) that Plaintiff's discovery
26 responses did not answer the questions. These objections are without merit. The interrogatories were
27 answered.

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I am over the age of eighteen and am not a
4 party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino,
California 91436.

5 On April 2, 2010, I served a copy of the following document described as **PLAINTIFF'S**
6 **REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR RELIEF FROM WAIVER OF**
DISCOVERY OBJECTIONS on the interested parties in this action as follows:

7 Kristin A. Pelletier, Esq.
8 Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
9 Los Angeles, California 90071
Facsimile: (213) 236-2700
10 Email: chumiston@ci.burbank.ca.us

Carol Ann Humiston
Senior Assistant City Attorney
Office of the City Attorney
275 East Olive Avenue,
Burbank, California 91510-6459
Facsimile: (818) 238-5724
Email: chumiston@ci.burbank.ca.us

11 — **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as
12 above, and placing each for collection and mailing on that date following ordinary business
13 practices. I am "readily familiar" with this business's practice for collecting and processing
14 correspondence for mailing. On the same day that correspondence is placed for collection
and mailing, it is deposited in the ordinary course of business with the U.S. mail Postal
Service in Los Angeles, California, in a sealed envelope with postage fully prepaid

15 XX **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package
16 provided by an overnight delivery carrier and addressed as above. I placed the envelope or
package for collection and overnight delivery at an office or a regularly utilized drop box of
the overnight delivery carrier.

17 — **BY FACSIMILE:** Based on an agreement of the parties to accept service by facsimile
18 transmission, I faxed the documents to the person(s) at the facsimile numbers listed above.
The telephone number of the sending facsimile machine is (818) 815-2737. The sending
19 facsimile machine issued a transmission report confirming that the transmission was
complete and without error. A copy of that report showing the time of service is attached.

20 — **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
21 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
documents to be sent to the person(s) at the e-mail address listed above. My electronic
22 notification address is dj@rglawyers.com. I did not receive, within a reasonable time after
the transmission, any electronic message or other indication that the transmission was
23 unsuccessful. A copy of the electronic transmission showing the time of service is attached.

24 XX **STATE:** I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

25 EXECUTED on April 2, 2010, at Encino, California.

26
27 _____
Daphne Johnson
28